



NEWS

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Supreme Court Adopts Amendments To California's Code of Judicial Ethics

San Francisco—At its last administrative conference, the California Supreme Court, which adopts the Code of Judicial Ethics governing the professional conduct of all California judicial officers, adopted a number of amendments to the Code:

1. Describing the applicability of the Code to judges on leave while running for other public office,
2. Modifying the list of canons applicable to retired judges sitting on assignment,
3. Specifically applying the Code to and barring the practice of law by subordinate judicial officers,
4. Conforming the canon governing judicial disqualification to the Code of Civil Procedure provision barring judges from sitting in matters relating to alternative dispute resolution providers under certain circumstances, and
5. Renumbering Canon 3E(3) and subsequent subdivisions of Canon 3E to conform to the standard numbering practice used in the Code.
6. Various additions also were made to the Advisory Committee's Commentary to canons 6H, 6G, and 4G.

All changes are effective January 1, 2005, unless otherwise noted.

These revisions should be read in the context of the entire Code and its commentary.

(over)

Applicability of the Code to judges on leave while running for non-judicial office

The court adopted Canon 6H, setting forth the applicability of the Code to judges on leave while running for non-judicial office pursuant to the California Constitution, article VI, section 17. The new provision balances the interests of judges who are on leave to seek public office with the interest of promoting continuing public confidence in those judges who may return to the bench should their campaigns be unsuccessful. Advisory committee commentary to Canon 6H also was added.

Canons applicable to retired judges sitting on assignment

The list of canons excepted from application to retired judges sitting on assignment contained in Canon 6B was modified to delete Canon 4D(2). Canon 4D(2) states that judges may not use their title to further a business or commercial venture, including a private dispute resolution firm. The exception no longer was necessary now that the Chief Justice, as a matter of policy, assigns only former judges who are not engaged in private dispute resolution.

Subordinate Judicial Officers

The court previously had adopted Canon 6G, as an interim canon permitting the existing practice of law by part-time subordinate judicial officers while the subject was being studied. At an earlier administrative conference, the court repealed canon 6G, but deferred the repeal until further related modifications could be made to the Code, which occurred at the last conference. Advisory committee commentary explains the repeal.

At the advisory committee's request, language also was added to the Commentary to Canon 4G, making clear that the bar against practicing law applicable to other judicial officers also applied to subordinate judicial officers. In addition, the court made changes to the Code, including the terminology section, to insert the phrase "subordinate judicial officer" in place of the terms "commissioner" and "referee" and to define the phrase. The changes in the applicability of the Code to subordinate judicial officers, including the repeal of canon 6G, were given an effective date of June 1, 2005, to permit courts to make any necessary adjustments.

Disqualification arising from discussions with dispute resolution providers

Canon 3E(5)(h) was added to preclude a justice from hearing matters under specified circumstances if he or she has an arrangement with or has had discussions concerning employment with a dispute resolution service. The change was made to conform the code with recent amendments to Code of Civil Procedures section 170.1, subdivision (a)(8).

Renumbering of Canon 3E

Canon 3E(3) was renumbered in a manner consistent with the numbering of the balance of the Code.

A copy of the court's order is attached.

IN THE SUPREME COURT OF CALIFORNIA

CODE OF JUDICIAL ETHICS

The court having considered proposed amendments to the Code of Judicial Ethics and additions to its commentary, as recommended and presented by the Supreme Court Advisory Committee, and the public responses thereto received following circulation of the proposed material for comment, hereby:

- 1) adopts canon 6H;
- 2) amends canon 6B;
- 3) repeals canon 6G, effective June 1, 2005;
- 4) amends canon 6A;
- 5) adds definitions to the “Terminology” section of the Code;
- 6) adopts canon 3E(5)(h);
- 7) renumbers Canon 3E(3);
- 8) places additional language in the Commentary to canons 6H, 6G, and 4G at the request of the Advisory Committee.

All changes to the Code are effective January 1, 2005, unless otherwise indicated. The text of the changes to the Code and the Commentary is attached hereto (7 pages).

Chief Justice

1) Canon 6H of the California Code of Judicial Ethics is adopted effective January 1, 2005, to read:

H. Judges on Leave Running for Other Public Office

A judge who is on leave while running for other public office pursuant to article VI, section 17 of the California Constitution shall comply with all provisions of this Code, except for the following, insofar as the conduct relates to the campaign for public office for which the judge is on leave:

2B(2)—Lending the prestige of judicial office to advance the judge's personal interest

2B(4)—Using the judicial title in written communications intended to advance the judge's personal interest

4C(1)—Appearing at public hearings

5—Engaging in political activity (including soliciting and accepting campaign contributions for the other public office)

ADVISORY COMMITTEE COMMENTARY:

These exceptions are applicable only during the time the judge is on leave while running for other public office. All of the provisions of this Code will become applicable at the time a judge resumes his or her position as a judge.

Conduct during elections for judicial office is governed by Canon 5

2) Canon 6B of the California Code of Judicial Ethics is amended effective January 1, 2005, to read:

B. Retired Judge Serving in the Assigned Judges Program

A retired judge who has filed an application to serve on assignment, meets the eligibility requirements set by the Chief Justice for service, and has received an acknowledgment of participation in the assigned judges program shall comply with all provisions of this Code, except for the following:

- 4C(2) Appointment to governmental positions
- ~~4D(2) Participation in business entities and managing investments~~
- 4(E) Fiduciary activities

3) Canon 6G of the California Code of Judicial Ethics is repealed, effective June 1, 2005.

G. Interim Rule Concerning Subordinate Judicial Officers **[Repealed]**

~~Notwithstanding Canons 6A, 6D, and 4G, any individual other than a judge or justice who performs judicial functions, including, but not limited to, a magistrate, court commissioner, referee, court-appointed arbitrator, judge of the State Bar Court, temporary judge, or special master, who is engaged in the practice of law as authorized as of December 18, 2002, by the court or by the presiding judge of the court on which such individual serves, may continue such practice pending the Supreme Court's review of permanent changes to these canons.~~

ADVISORY COMMITTEE COMMENTARY:

The Supreme Court has announced that this interim canon is repealed effective June 1, 2005, at which time all subordinate judicial officers will be prohibited from practicing law. See Government Code section 69917 and rule 6.665 of the California Rules of Court.

4) Canon 6A of the California Code of Judicial Ethics is amended effective January 1, 2005, to read:

A. Judges

Anyone who is an officer of the state judicial system and who performs judicial functions, including, but not limited to, a subordinate judicial officer, magistrate, ~~court commissioner, referee,~~ court-appointed arbitrator, judge of the State Bar Court, temporary judge, or and special master, is a judge within the meaning of this Code. All judges shall comply with this Code except as provided below.

ADVISORY COMMITTEE COMMENTARY

For the purposes of this Canon, if a retired judge is serving in the assigned judges program, the judge is considered to “perform judicial functions.” Because retired judges who are privately retained may perform judicial functions, their conduct while performing those functions should be guided by this Code.

5) The commentary to Canon 4G of the Code of Judicial Ethics is amended, effective January 1, 2005, to read:

G. Practice of Law

A judge shall not practice law.

ADVISORY COMMITTEE COMMENTARY:

This prohibition refers to the practice of law in a representative capacity and not in a pro se capacity. A judge may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in so doing, a judge must not abuse the prestige of office to advance the interests of the judge or member of the judge’s family. See Canon 2B.

This prohibition applies to subordinate judicial officers, magistrates, special masters, and judges of the State Bar Court.

6) The definition of “subordinate judicial officer” in the Terminology section of the California Code of Judicial Ethics is adopted, effective January 1, 2005, to read:

Terminology

“Subordinate judicial officer.” A subordinate judicial officer is, for the purposes of this Code, a person appointed pursuant to article VI, section 22 of the California Constitution, including, but not limited to, a commissioner, referee, and hearing officer. See Canon 6A.

7) The definition of “temporary judge” in the Terminology section of the California Code of Judicial Ethics is amended, effective January 1, 2005, to read:

Terminology

“Temporary Judge.” A temporary judge is an active or inactive member of the bar who, pursuant to article VI, section 21 of the California Constitution, serves or expects to serve as a judge once, sporadically, or regularly on a part-time basis under a separate court appointment for each period of service or for each case heard. See Canons 4C(3)(d)(i), 6A, and 6D.

8) Canon 3E(5)(h) of the California Code of Judicial Ethics [see No. 9 below] is adopted effective January 1, 2005, to read:

(5) Disqualification of an appellate justice is also required in the following instances:

(a)–(g) * * *

(h) The justice has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in, or, within the last two years has participated in, discussions regarding such prospective employment or service, and either of the following applies:

- (i) The arrangement is, or the discussion was, with a party to the proceeding;
- (ii) The matter before the justice includes issues relating to the enforcement of an agreement to submit a dispute to alternative dispute resolution or the

appointment or use of a dispute
resolution neutral.

For purposes of this paragraph, “party” includes the
parent, subsidiary, or other legal affiliate of any entity
that is a party and is involved in the transaction,
contract, or facts that gave rise to the issues subject to
the proceeding.

For purposes of this canon, “dispute resolution
neutral” means an arbitrator, a mediator, a temporary
judge appointed under section 21 of article VI of the
California Constitution, a referee appointed under
Code of Civil Procedure section 638 or 639, a special
master, a neutral evaluator, a settlement officer, or a
settlement facilitator.

9) Canon 3E is renumbered, effective January 1, 2005

(34) Ownership of a corporate bond issued by a party to a proceeding and having a fair market value exceeding one thousand five hundred dollars is disqualifying. Ownership of government bonds issued by a party to a proceeding is disqualifying only if the outcome of the proceeding could substantially affect the value of the judge’s bond. Ownership in a mutual or common investment fund that holds bonds is not a disqualifying financial interest.

ADVISORY COMMITTEE COMMENTARY:

The distinction between corporate and government bonds is consistent with the Political Reform Act (see Gov. Code, § 82034), which requires disclosure of corporate bonds, but not government bonds. Canon 3E(4) is intended to assist judges in complying with Code of Civil Procedure section 170.1(a)(3) and Canon 3E(3)(iii)(d).

- (4) An appellate justice shall disqualify himself or herself in any proceeding if for any reason:
- ~~(i)~~ (a) the justice believes his or her recusal would further the interest of justice; or
 - ~~(ii)~~ (b) the justice substantially doubts his or her capacity to be impartial; or

~~(iii)~~(c) the circumstances are such that a reasonable person aware of the facts would doubt the justice's ability to be impartial.

(5) Disqualification of an appellate justice is also required in the following instances:

- (a) The appellate justice has appeared or otherwise served as a lawyer in the pending matter, or has appeared or served as a lawyer in any other matter involving any of the same parties if that other matter related to the same contested issues of fact and law as the present matter.
- (b) Within the last two years, (i) a party to the proceeding, or an officer, director or trustee thereof, either was a client of the justice when the justice was engaged in the private practice of law or was a client of a lawyer with whom the justice was associated in the private practice of law; or (ii) a lawyer in the proceeding was associated with the justice in the private practice of law.
- (c) The appellate justice represented a public officer or entity and personally advised or in any way represented such officer or entity concerning the factual or legal issues in the present proceeding in which the public officer or entity now appears.
- (d) The appellate justice, or his or her spouse, or a minor child residing in the household, has a financial interest or is a fiduciary who has a financial interest in the proceeding, or is a director, advisor, or other active participant in the affairs of a party. A financial interest is defined as ownership of more than a 1 percent legal or equitable interest in a party, or a legal or equitable interest in a party of a fair market value exceeding one thousand five hundred dollars. Ownership in a mutual or common investment fund that holds securities does not itself constitute a financial interest; holding office in an educational, religious, charitable, fraternal or civic organization does not confer a financial interest in the organization's securities; and a proprietary interest of a policyholder in a mutual insurance company or mutual savings association or similar

interest is not a financial interest unless the outcome of the proceeding could substantially affect the value of the interest. A justice shall make reasonable efforts to keep informed about his or her personal and fiduciary interests and those of his or her spouse and of minor children living in the household.

- (e) The justice or his or her spouse, or a person within the third degree of relationship to either of them, or the spouse thereof, is a party or an officer, director or trustee of a party to the proceeding, or a lawyer or spouse of a lawyer in the proceeding is the spouse, former spouse, child, sibling, or parent of the justice or of the justice's spouse, or such a person is associated in the private practice of law with a lawyer in the proceeding.
- (f) The justice (i) served as the judge before whom the proceeding was tried or heard in the lower court, (ii) has a personal knowledge of disputed evidentiary facts concerning the proceeding, or (iii) has a personal bias or prejudice concerning a party or a party's lawyer. The justice's spouse or a person within the third degree of relationship to the justice or his or her spouse, or the person's spouse, was a witness in the proceeding.
- (g) A temporary or permanent physical impairment renders the judge unable properly to perceive the evidence or conduct the proceedings.

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